Miami Rivet of Puerto Rico, Inc., Miami Rivet Company, and Raytech Corporation *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 24–CA–6196

July 20, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by the Union on June 29, 1990, the General Counsel of the National Labor Relations Board issued a complaint on August 31, 1990, against Miami Rivet of Puerto Rico, Inc. (Respondent MRPR), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Respondent MRPR filed an answer, admitting in part and denying in part certain allegations of the complaint.

On January 23, 1992, the General Counsel issued an amended complaint against Miami Rivet of Puerto Rico, Inc., Miami Rivet Company, and Raytech Corporation (the Respondent), alleging that they are a single employer and as such has violated Section 8(a)(1), (3), and (5) of the Act. Although properly served copies of the amended complaint, the Respondent has failed to file a timely answer to the amended complaint.

On March 17, 1992, the General Counsel filed a Motion for Partial Summary Judgment. On March 20, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

In his Motion for Partial Summary Judgment, the General Counsel requests summary judgment as to all the ''allegations of the Complaint and Amended Complaint not denied in the answer to the original complaint.''

The original complaint alleged, inter alia, that Respondent MRPR violated Section 8(a)(1) by threatening its employees with plant closure because of their protected union activities. It also alleged that Respondent MRPR violated Section 8(a)(5) and (1) by failing to provide requested information to the Union relevant to its performance as the collective-bargaining representative of the unit employees, and terminating a portion of its Puerto Rico operations by laying off unit employees and failing to bargain over the effects of that decision.

In its answer to the original complaint, Respondent MRPR denied that it threatened employees with plant closure because of their union activities. Respondent MRPR admitted[1] that the Union sent a letter March 8, 1990, requesting information concerning Respondent MRPR's decision to terminate a part of its Puerto Rico operations but denied that the information was relevant or necessary to the Union's performance of its collective-bargaining duties. Respondent MRPR also admitted that on March 16, 1990, it had closed a portion of its Puerto Rico operations and had terminated certain employees named in the complaint. Respondent MRPR contended, however, that it had held a meeting on March 6, 1990, to inform the Union of its decision to close and its willingness to meet with the Union to discuss the effects of the closing on employees. Respondent MRPR also contended that it had reiterated this position to the Union in letters dated March 6, 12, 15, and 29. Respondent MRPR asserted that it had provided the Union with the information it had requested that was relevant to the discussion related to the effects of the closure decision on the unit employees. Respondent MRPR further contended that it has always been available to meet with the Union to discuss the effects of its closing on the employees but that the Union has failed to request a meeting to discuss these issues. Respondent MRPR denied that it had violated the Act in any respect, and it requested that the complaint be dismissed in its entirety.

The amended complaint included the 8(a)(1) and 8(a)(5) and (1) allegations contained in the original complaint but added two new substantive allegations. The amended complaint alleged that Miami Rivet of Puerto Rico, Inc., Miami Rivet Company, and Raytech Corporation constitute a single employer (the Respondent) and that on March 16, 1990, the Respondent discharged employee Jose R. Santini because of his protected union activities and has refused to reinstate him, in violation of Section 8(a)(3) and (1) of the Act.

Section 102.20 of the Board's Rules and Regulations states:

> The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without

[1] Respondent MRPR also admitted the allegations pertaining to filing and service of the charge, to jurisdiction, to the Union's status as the employees' collective-bargaining representative, and that it was organized under the laws of the Commonwealth of Puerto Rico.

knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

As required by Section 102.20, Respondent MRPR's answer to the original complaint admitted, denied, or explained all the allegations related to the alleged independent 8(a)(1) and 8(a)(5) and (1) violations. The amended complaint realleged the earlier allegations but also included new allegations relating to the single employer status of the Respondent and an alleged 8(a)(3) discharge. The Respondent failed to file a timely answer to the amended complaint.[2]

The General Counsel does not seek summary judgment on the 8(a)(1) and 8(a)(5) and (1) allegations common to both the original and amended complaints. We will remand this portion of the proceeding to the Region for further appropriate action. Respondent MRPR's answer to the original complaint does not, however, constitute an answer to the newly alleged single employer status issue or the alleged 8(a)(3) violation. *Caribe Cleaning Services*, 304 NLRB 932 (1991), *Auburn Die Co.*, 282 NLRB 1044 (1987). See also *Oldwick Materials*, 264 NLRB 1152 fn. 2 (1982). Those allegations of the amended complaint remain unanswered.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Partial Summary Judgment as to the status of the Respondent as a single employer and the unlawful discharge of, and failure to reinstate, employee Jose R. Santini.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Miami Rivet of Puerto Rico, Inc., a Puerto Rico corporation, has been engaged in the manufacture of metal rivets at its facility in Carolina, Puerto Rico, where it annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. Additionally, during the 1990 calendar year, it sold and shipped from its Carolina, Puerto Rico facility products, goods, and materials valued in excess of $50,000 directly to points outside the Commonwealth of Puerto Rico.

Respondent Miami Rivet Company has been engaged in the manufacture of metal rivets at its facility in Hialeah, Florida, where in the normal course and conduct of its business operations in the State of Florida, it annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the State of Florida. Additionally, during the 1990 and 1991 calendar years, it sold and shipped from its Hialeah, Florida facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Florida.

Respondent Raytech Corporation, a Delaware corporation, has been engaged in the manufacture and marketing of specialty engineered products for heat re-

[2] The Respondent was properly served with copies of the amended complaint. An answer to the amended complaint was due February 6, 1992. No answer was filed. The regional attorney, by letter dated February 11, 1992, notified the Respondent that unless an answer to the amended complaint was received by February 19, 1992, a Motion for Summary Judgment would be filed. On February 24, 1992, the Region received a letter from the vice president/general counsel of Raytech Corporation stating that Miami Rivet of Puerto Rico, Inc. and Miami Rivet Company had been liquidated, and that Raytech Corporation had been in bankruptcy since 1989. (According to the General Counsel, Raytech Corporation filed a petition seeking relief under Chapter 11 of the Bankruptcy Code on March 10, 1989.) On March 17, 1992, the General Counsel filed the present Motion for Partial Summary Judgment. On March 18, 1992, the vice president/general counsel of Raytech Corporation wrote to the Board advising it that Raytech was in bankruptcy and that the Board's proceedings were stayed under § 362 of the Bankruptcy Code. On March 20, 1992, the Board issued its order transferring the proceeding to the Board and Notice to Show Cause. On March 26, 1992, the Board advised Raytech that the Board's proceedings are not stayed by the filing of a petition for bankruptcy.

We note that Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985). Nor does the commencement of bankruptcy proceedings strip the Board of jurisdiction or authority to consider and process an unfair labor practice to its conclusion. *Olympic Fruit & Produce Co.*, 261 NLRB 322, 323 (1982).

On April 1, 1992, Raytech filed a ''Motion for Enlargement of Time to Respond'' to the order transferring the proceeding to the Board and Notice to Show Cause. In the motion the Respondent stated that its request for an extension of time was based on its previously held incorrect belief that it was exempt from Board proceedings under the stay provision of the Bankruptcy Code. The motion was granted with an extension of time until April 27, 1992. On April 27, 1992, the Respondent filed an ''Answer to Amended Complaint.'' There has been no response filed to the Notice to Show Cause. The General Counsel has filed a motion to strike the answer to amended complaint, contending it is untimely.

Initially, we note that the Respondent received an extension of time to respond to the Board's Notice to Show Cause—it did not receive an extension of time to answer the amended complaint. As pointed out by the General Counsel, the Respondent's answer does not set forth any basis for finding that good cause exists for the Respondent's failure to file a timely answer to the amended complaint. If the Respondent is contending—as it suggested in its ''Motion for Enlargement''—that it did not file an answer to the amended complaint because it believed that it was exempt from Board proceedings under § 362 of the Bankruptcy Code, we find that the Respondent has not established good cause for its failure to answer the amended complaint. The Board has rejected a respondent's attempt to invoke its bankruptcy petition as a defense to its failure to file an answer. *Rite Style Fashions*, 280 NLRB 1134 (1986). See also *Goldstein Co.*, 274 NLRB 682 (1985). The Respondent's answer to the amended complaint is untimely and we grant the General Counsel's motion to srike.

Contrary to his colleagues, Member Devaney in the circumstances of this case would deny the General Counsel's motion to strike and would accept Respondent Raytech's answer to the amended complaint. Accordingly, he would also deny the General Counsel's Motion for Partial Summary Judgment.

sistant, inertia control, fastening, and light weight structural component applications with principal offices at One Corporate Drive, Shelton, Connecticut, and with facilities located in the States of Indiana and Florida, the Commonwealth of Puerto Rico, and in the Federal Republic of Germany. In the normal course and conduct of its business operations, it annually purchases and receives goods and products at its facilities in the State of Indiana valued in excess of $50,000 directly from suppliers located outside the State of Indiana. Additionally, during the 1990 and 1991 calendar years, it sold and shipped from its facilities in the State of Indiana products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana.

Respondent Miami Rivet of Puerto Rico, Inc., and Respondent Miami Rivet Company are wholly owned subsidiaries of Respondent Raytech Corporation.

At all material times, Miami Rivet of Puerto Rico, Inc., Miami Rivet Company, and Raytech Corporation, have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as ''single-integrated business enterprises.'' By virtue of these facts, we find that Miami Rivet of Puerto Rico, Inc., Miami Rivet Company, and Raytech Corporation constitute a single integrated business enterprise and a single employer within the meaning of the Act.[3] We find that the Respondent is an employer engaged in commerce, and in business affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> *Included*: All production and maintenance employees employed by the Respondent at its place of business located in Carolina, Puerto Rico.
>
> *Excluded*: All other employees, office clerical employees, guards and supervisors as defined in the Act.

[3] Because the alleged violations attributed to Respondents Miami Rivet Company and Raytech Corporation are derivative, and stem from their status as a single employer with Respondent Miami Rivet of Puerto Rico, Inc., the answer filed by the latter suffices to preclude entry of summary judgment against the former two as to the original complaint allegations realleged in the amended complaint. *Caribe Cleaning Services*, supra, fn. 3.

On February 23, 1990, the Union was certified as the exclusive collective-bargaining representative of the bargaining unit employees and since then has continued to serve in that capacity. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

About March 16, 1990, the Respondent discharged employee Jose R. Santini because of his protected union activities and has refused to reinstate him.

By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

CONCLUSION OF LAW

By discharging Jose R. Santini on March 16, 1990, and refusing to reinstate him, because of his protected union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to cease terminating employees because of their protected activities. We shall also order the Respondent to offer employee Jose R. Santini reinstatement and to make him whole for any loss of earnings and other benefits to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to remove from its files any reference to the unlawful discharge and to notify Jose R. Santini in writing that this has been done and that the unlawful discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Miami Rivet of Puerto Rico, Inc., Carolina, Puerto Rico; Miami Rivet Company, Hialeah, Florida; and Raytech Corporation, Shelton, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their protected union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Jose R. Santini immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights and privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge of Jose R. Santini and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at each of its facilities in Carolina, Puerto Rico, Hialeah, Florida, and Shelton, Connecticut, copies of the attached notice marked ''Appendix.''[4] Copies of these notices in English and in Spanish, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent –immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted only as to the single employer status of the Respondent and the unlawful discharge of Jose R. Santini.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 24 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge on those allegations on which summary judgment is not granted.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice

WE WILL NOT discharge employees because of their protected union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Jose R. Santini immediate and full reinstatement to his former position, or if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify Jose R. Santini that we have removed from our files any reference to his discharge and the discharge will not be used against him in any way.

MIAMI RIVET OF PUERTO RICO, INC.,
MIAMI RIVET COMPANY, AND RAYTECH
CORPORATION

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''